

7

1 Charles C.H. Wu (SBN 166756)
2 (cchwu@wclawyers.com)
3 Vikram M. Reddy, SBN 228515
4 (vreddy@wclawyers.com)
5 Sean J. Haddad (SBN 293960)
6 (shaddad@wclawyers.com)
7 **CHARLES C.H. WU & ASSOCIATES, APC**
8 98 Discovery
9 Irvine, CA 92618-3105
10 Telephone: (949) 251-0111

11 Attorneys for Telnet-RX

12 **UNITED STATES BANKRUPTCY COURT**
13 **EASTERN DISTRICT OF CALIFORNIA**
14 **FRESNO DIVISION**

15 In re
16 TULARE LOCAL HEALTHCARE
17 DISTRICT dba TULARE REGIONAL
18 MEDICAL CENTER

19 Debtor.

Case No. 1:17-13797

Chapter 9

DC No.: CHW-1

**MOTION TO ALLOW LATE-FILED
PROOF OF CLAIM**

Date: May 16, 2019
Time: 9:30 a.m.
Dept.: Department B, Courtroom 13
2500 Tulare Street, Fifth Floor
Fresno, California 93721

Judge: Honorable René Lastreto II

20 **TO THE HONORABLE RENÉ LASTRETO II, UNITED STATES BANKRUPTCY**
21 **JUDGE:**

22 Telnet-RX ("Telnet") files this *Motion to Allow Late-Filed Proof of Claim* (the "Motion")
23 in the Chapter 9 case of Tulare Local Healthcare District, dba Tulare Regional Medical Center (the
24 "Debtor"). In support of the Motion, Telnet is concurrently filing the notice of hearing, index of
25 exhibits, and declaration of Tom Nguyen.

26 **I. INTRODUCTION**

27 Telnet should be allowed to late-file a proof of claim in the amount of \$57,010.58 based on
28 excusable neglect. Telnet did not receive notice of the bar date and did not understand the impact

1 of the order authorizing the Debtor to reject Telnet's contract. However, the Debtor has been
2 aware of the amount owed to Telnet. The Debtor has not yet filed a plan of adjustment and, if and
3 when the Debtor does, the Debtor should easily be able to incorporate Telnet's relatively small
4 claim. Moreover, Telnet has acted in good faith. At the Debtor's request, and despite the Debtor's
5 bankruptcy filing and the Debtor owing an outstanding pre-petition debt to Telnet, Telnet
6 continued to provide critical remote pharmacy services to the Debtor post-petition. These valuable
7 services allowed the Debtor to operate without a 24-hour pharmacy on-site. Accordingly, and as
8 further detailed below, Telnet should be allowed to late-file a proof of claim.

9 **II. BACKGROUND**

10 **A. Telnet and the Debtor**

11 Telnet provides cost-effective remote pharmacy services to facilities that are unable to
12 operate a 24-hour pharmacy. Hospitals are required to maintain 24-hour pharmacy services by
13 both the California Department of Public Health and the Centers for Medicare & Medicaid
14 Services. Telnet has provided remote pharmacy services to the Debtor, who was unable to staff a
15 24-hour pharmacy, since about June 1, 2009. (*See* Nguyen Decl. at ¶ 1.)

16 On September 30, 2017, the Debtor commenced this case by filing a voluntary petition
17 under Chapter 9 of the Bankruptcy Code [Docket No. 1]. Thereafter, the Debtor's Chief Nursing
18 Officer, Angie Graziano, requested that Telnet continue providing remote pharmacy services to
19 the Debtor despite the Debtor's bankruptcy filing and despite the Debtor owing Telnet for pre-
20 petition services. Attached to the concurrently-filed Index of Exhibits as Exhibit "1" is a true and
21 correct copy of a February 21, 2019 letter from Angie Graziano to Mr. Nguyen reflecting the
22 Debtor's post-petition request. Pursuant to the Debtor's request, Telnet continued to provide
23 remote pharmacy services to the Debtor until October 29, 2017. (*See* Nguyen Decl. at ¶¶ 3-4; *see*
24 *also* Index of Exhibits, Ex. 1.)

25 **B. The Debtor's Bankruptcy Case, Notice of Bar Date, and Rejection Order**

26 On January 26, 2018, the Court entered the *Order Fixing Bar Date for Filing Proofs of*
27 *Claim* [Docket No. 377] (the "Notice of Bar Date"). The Notice of Bar Date set April 10, 2018
28 (the "Bar Date") as the bar date to timely file a proof of claim against the Debtor. While the proof

1 of service for the Notice of Bar Date [Docket No. 391] reflects that the Notice of Bar Date was
2 mailed to Telnet, Telnet never received the Notice of Bar Date. (*See* Nguyen Decl. at ¶ 6.)

3 On October 27, 2018, the Court entered the *Order on Fifth Omnibus Motion Authorizing*
4 *Rejection of Certain Executory Contracts* [Docket No. 850] (the "Rejection Order"). The
5 Rejection Order authorized the Debtor to reject Telnet's contract and provided that "[t]he date by
6 which any claim resulting from the rejection of this [sic] Designated Contracts shall be filed is
7 December 24, 2018" (the "Rejection Claim Deadline"). Telnet did not understand the import of,
8 and was confused by, the Rejection Order. (*See* Nguyen Decl. at ¶ 5.) Telnet did not understand
9 what the Rejection Order meant by "any claim resulting from the rejection of this Designated
10 Contracts. . . ." (*See id.*) Given that Telnet did not receive the Notice of Bar Date, Telnet's nine-
11 plus year relationship with the Debtor, and the Debtor's post-petition request for Telnet to continue
12 to provide services, and the fact that Telnet and the Debtor renegotiated a payment plan to
13 continue to provide services in spite of the outstanding pre-petition claim, Telnet did not
14 appreciate that it had to or could file a claim by the Rejection Claim Deadline. (*See id.*)

15 On January 21, 2019, the Debtor filed its most recent status report, the *Fifth Chapter 9*
16 *Status Report* [Docket No. 1020] (the "Fifth Status Report"). According to the Fifth Status Report,
17 "[t]he District is in the process of evaluating all claims [and] will file such objections as necessary
18 at some point in the future, likely after plan confirmation." (*See* Index of Exhibits, Ex. 2, Fifth
19 Status Report at 2, lines 22-24.) As of the filing of this Motion, the Debtor has not filed a plan of
20 adjustment. Further, as of the filing of this Motion, a total of \$52,960,335.04 in claims have been
21 filed according to the claim register. Attached to the Index of Exhibits as Exhibit "3" is a copy of
22 an excerpt of the claims register reflecting the total claims on file as of April 2, 2019.

23 **III. TELNET'S CLAIM**

24 If the Motion is granted, then Telnet will file a proof of claim in the amount of
25 approximately \$57,010.58. Of this sum, \$37,864.58 is for pre-petition services and \$19,146.00 is
26 for post-petition services. (*See* Nguyen Decl. at ¶ 7.) Telnet will indicate on the proof of claim
27 that the portion of its claim for post-petition services is entitled to priority as an administrative
28 expense pursuant to 11 U.S.C. §§ 503, 507, and 901. The balance of the claim will be a general

1 unsecured claim. Telnet reserves the right to seek, by separate motion, an order allowing and
2 requiring payment of the post-petition portion of its claim as an administrative expense.

3 **IV. THE COURT MAY ALLOW A LATE-FILED CLAIM IF THE FAILURE TO**
4 **COMPLY WITH THE BAR DATE WAS THE RESULT OF EXCUSABLE**
5 **NEGLECT**

6 Under Bankruptcy Rule 3003(c)(3), "[t]he court shall fix and for cause shown may extend
7 the time within which proofs of claim or interest may be filed." (*See* Bankruptcy Rule
8 3003(c)(3).) Bankruptcy Rule 3003 applies in chapter 9 cases. (*See* Bankruptcy Rule 3003(a).)

9 In addition, Bankruptcy Rule 9006(b)(1) provides the following:

10 [w]hen an act is required or allowed to be done at or within a specified
11 period by these rules or by a notice given thereunder or by order of
12 court, the court for cause shown may at any time in its discretion . . .
13 (2) on motion made after the expiration of the specified period permit
the act to be done where the failure to act was the result of excusable
neglect.

14 (*See* Bankruptcy Rule 9006(b)(1).) In *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*,
15 the Supreme Court stated that "Rule 9006(b)(1) empowers a bankruptcy court to permit a late
16 filing if the movant's failure to comply with an earlier deadline was the result of excusable
17 neglect." 507 U.S. 380, 382 (1993) (internal quotations omitted). In the Chapter 9 case of *In re*
18 *City of Detroit, Michigan*, the bankruptcy court held that the "excusable neglect" standard of
19 Bankruptcy Rule 9006(b)(1) governs late filings of proofs of claim in Chapter 9 cases. *See* 576
20 B.R. 552, 558 (Bankr. E.D. Mich. 2017); *see also In re Duarte*, 146 B.R. 985, 961 at n.3 (Bankr.
21 W.D. Tex. 1992) ("Rule 9006(b) does apply to late filed claims by creditors in chapter 9 and 11
22 cases.") Accordingly, the Court may allow Telnet to file a proof of claim after the Bar Date and
23 the Rejection Claim Deadline where the failure to timely file such was the result of excusable
24 neglect.
25
26
27
28

1 **V. TELNET SHOULD BE ALLOWED TO LATE-FILE A PROOF OF CLAIM BASED**
2 **ON EXCUSABLE NEGLIGENCE**

3 The determination of whether neglect is excusable "is at bottom an equitable one, taking
4 account of all relevant circumstances surrounding the party's omission." *See Pioneer*, 507 U.S. at
5 395. Whether the failure to comply with the deadline constitutes excusable neglect depends on at
6 least four factors: (1) the danger of prejudice to the debtor; (2) the length of the delay and its
7 potential impact on the proceedings; (3) the reason for the delay, including whether it was within
8 the reasonable control of the movant; and (4) whether the movant acted in good faith. (*See id.*)

9 **1. There Is No Danger of Prejudice to the Debtor**

10 There is no danger of prejudice to the Debtor. The Debtor has been aware of the amount
11 owed to Telnet as the Debtor requested that Telnet continue providing services post-petition and
12 the parties negotiated a payment plan related thereto. (*See* Index of Exhibits, Ex. 1.) If the Motion
13 is granted, Telnet intends to file a proof of claim in the amount of approximately \$57,010.58 based
14 on pre-petition services of \$37,864.58 and post-petition services of \$19,146.00. (*See* Nguyen
15 Decl. at ¶ 7.) This is a small amount relative to the \$52,960,335.04 in total claims filed. The
16 Debtor has not yet filed a plan of adjustment. According to the Debtor's most recent status report,
17 the Debtor is in the process of reviewing claims. If and when the Debtor files a plan of
18 adjustment, the Debtor can easily incorporate Telnet's relatively small claim. Thus, the first factor
19 weighs in favor of granting the Motion.

20 **2. The Length of the Delay and Its Potential Impact on the Proceedings**

21 Allowing Telnet to file a relatively small claim one year after the Bar Date will not have
22 any detrimental impact on the proceedings. As previously discussed, the Debtor should easily be
23 able to incorporate Telnet's claim into a plan if and when the Debtor files a plan. Further, the
24 Debtor indicated that it intends on filing claim objections after plan confirmation. (*See* Index of
25 Exhibits, Ex. 2 at 2, lines 22-24.) Thus, allowing Telnet's claim now will not inhibit the Debtor's
26 claim review process. Moreover, because the claim that Telnet intends to file is relatively small
27 compared to the \$52,693,580.24 in total claims filed, its allowance would not have a material
28 effect on creditors' distributions. Thus, the second factor weighs in favor of granting the Motion.

1 **3. The Reasons for the Delay Were Not Within Telnet's Control**

2 The reasons for the delay were not within Telnet's control. Telnet never received the
3 Notice of Bar Date. (*See* Nguyen Decl. at ¶ 6.) Had Telnet received the Notice of Bar Date,
4 Telnet would have timely filed a proof of claim. Moreover, Telnet did not understand the import
5 of, and was confused by, the Rejection Order and Telnet did not understand the meaning of filing
6 "any claim resulting from the rejection of this Designated Contracts." (*See* Nguyen Decl. at ¶ 5.)
7 Moreover, at that time, Telnet was hoping that the Debtor would reopen its hospital and Telnet
8 could resume services. (*See id.*) Given that Telnet did not receive the Bar Date Notice, and
9 considering Telnet's nine-plus year relationship with the Debtor, the Debtor's post-petition request
10 for Telnet to continue to provide services, and the fact that Telnet and the Debtor renegotiated a
11 payment plan for Telnet to continue to provide services in spite of Telnet's outstanding pre-
12 petition claim, Telnet did not appreciate that it had to or could file a claim by the Rejection Claim
13 Deadline (and after the Bar Date had already passed). Thus, the third factor weighs in favor of
14 granting the Motion.

15 **4. Telnet is Acting in Good Faith**

16 Telnet is acting in good faith. Telnet has demonstrated good faith by continuing to provide
17 critical services to the Debtor post-petition even though Telnet was owed outstanding amounts for
18 pre-petition work, and Telnet hopes that it will be able to provide services to the Debtor in the
19 future. Further, Telnet did not receive the Notice of Bar Date and upon realizing that the Bar Date
20 and Rejection Claim Deadline had passed, Telnet quickly moved to retain counsel and have its
21 claim allowed. Thus, the fourth factor weighs in favor of granting the Motion.

22 Accordingly, as detailed above, the *Pioneer* factors weigh heavily in favor of finding that
23 Telnet's neglect was excusable.

24 **VI. CONCLUSION**

25 Based on the foregoing, Telnet requests that the Court grant the Motion and enter an order:

- 26 1. Granting the Motion;
- 27 2. Authorizing Telnet to file a proof of claim that will be deemed timely if filed within
28 30 days after entry of an order granting the Motion; and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3. Granting such other and further relief as the Court deems appropriate.

DATED: April 22, 2019

CHARLES C.H. WU & ASSOCIATES, APC

By: /s/ Charles C.H. Wu
Charles C.H. Wu
Vikram M. Reddy
Sean J. Haddad
Attorneys for Telnet-RX